IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.687 of 1993

Amirthavalli .. Appellant

-Vs-

Santhanam .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 20.11.1991 and made in A.S.No.136 of 1988 on the file of the Court of the Subordinate Judge, Karur, reversing the judgment and decree dated 23.8.1988 and made in O.S.No.204 of 1986 on the file of the Court of the Principal District Munsif, Kulithalai.

!For Appellant : Mr.S.Annadurai

^For Respondent : Mr.V.Bharathidasan

:JUDGMENT

This second appeal is directed from the judgment of the learned Subordinate Judge, Karur, made in A.S.No.136/88 wherein the judgment of the trial Court granting a decree in a suit for declaration and damages was reversed.

2. The case of the plaintiff as could be seen from the averments made in the plaint, is as follows: The suit property is a house situated in the Harijan Colony of Chinnamanaickenpatty Hamlet of Balaraajapuram, Kulithalai Taluk, and the same was assigned by the Government in favour of one Palanisamy, the husband of the plaintiff, who took possession of the same immediately after the assignment. The husband of the plaintiff had to be away from the village. He was a teacher. The defendant approached the plaintiff's husband for letting out the property on rent. The husband of the plaintif agreed to the same and leased out the property to the defendant. In fact the defendant also had a house, assigned in his favour and let out it to a close relative. There was an oral tenancy agreement between the plaintiff's husband and the defendant. The defendant took possession of the property as a tenant on a monthly rental of Rs.20/- payable according to the Gregorian Calendar. The defendant was in possession, enjoyment and occupation of the same as a tenant under the plaintiff, and the rent was paid upto February 1984, and thereafter, there was arrears to the tune of Rs.560/-. The plaintiff's

husband died leaving the plaintiff and six minor children as the heirs. They sought for surrender of the property; but, the defendant was evading, and he did not hand over the same. In such circumstances, it became necessary for filing the suit.

3. The suit was resisted by the defendant stating that the case of the plaintiff that the suit property was allotted to the plaintiff's husband Palanisamy, and subsequently, there was an oral tenancy agreement between Palanisamy and the defendant, and the defendant was in possession of the property all along as a tenant, and there was a rental payment upto February 1984, and subsequently, there were arrears of rent, was false and tobe denied; that the suit property was allotted in favour of the defendant; that he has been in possession all along; that the plaintiff has no right over the same, and hence, the suit was to be dismissed.

4. The trial Court framed the necessary issues, tried the suit and decreed the same. The aggrieved defendant took it on appeal, wherein the judgment of the trial Court was reversed, and the suit was dismissed by the first appellate Court. Hence, the aggrieved plaintiff has brought forth this second appeal.

5. At the time of admission, the following substantial question of law was formulated by this Court: "Whether the judgment of the lower appellate Court is vitiated by its failure to consider the relevant evidence on record?"

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions, paid its full attention on the same and scrutinised the documents available herein. But, this Court is unable to notice any merit in this appeal.

7. The specific case of the plaintiff, as could be seen in the instant suit, wherein she sought for declaratory relief and recovery of possession and also arrears of rent, was that originally, there was an assignment in respect of the suit property by the Government in favour of her husband one Palanisamy; that he took possession of the same immediately; that he was employed as a teacher outside the village; that the property was let out to the defendant on rent, pursuant to an oral tenancy agreement; that the defendant was paying the rent also; that from March 1984, there was rental arrears to the tune of Rs.560 /-; that there was a demand, which was not met by the defendant, and hence, the suit was filed. The defendant resisted the suit by stating that the assignment in favour of Palanisamy, the husband of the plaintiff, the factum of possession, the oral tenancy agreement between the defendant and the plaintiff's husband and the payment of rent all were false; but, the property was actually assigned in favour of the defendant. Now, at this stage, this Court is able to see number of circumstances, which stood against and impropablise the case of the plaintiff.

8. The case of the plaintiff was that there was an assignment by the Government in favour of Palanisamy, the husband of the plaintiff. It is

pertinent to note that there is no averment in the plaint as to when such an assignment was made and what was the order under which the assignment was made. The plaintiff had much relied on Ex.A8, an order of assignment, a copy of which was marked as Ex.A1, before the Courts below. A perusal of Ex.A1, the original of which, according to the plaintiff, is Ex.A8, would show that it was an application made by one Muthu Veeran. From the other part of Ex.A1, it could be seen that the document contains the signature of the Harijan Welfare Officer, Tiruchirapalli, stating that all these disputes between the parties have got to be settled without any quarrel whatsoever. According to the plaintiff's Counsel, Ex.A1 contains details as to the number of persons and the allotment of houses, and thus, it has got to be taken as an assignment of the property. The Court is unable to either agree with or appreciate the said contention for the simple reason that neither Ex.A1 nor Ex.A8 was an order of any assignment. No explanation is forthcoming what happened to the original order. Had it been true that the property was assigned in favour of Palanasamy, the husband of the plaintiff, there should have been an original order. So long as no explanation convincing or acceptable, is put forth, such an assignment cannot be accepted in the eye of law.

9. Added further, a register in respect of the allotment would be kept maintained by the said Department, and when the allotment made in favour of Palanasamy, the husband of the plaintiff, was denied in the written statement, a duty was cast upon the plaintiff to prove the same by summoning the documents necessary from the said Department; but, it has not been done so. Another circumstance, which stood against the case of the plaintiff, is the alleged tenancy. The plaint does not contain any averment when the said oral tenancy agreement was entered into between the parties. Not even any material was placed to prove the same. Hence, the first appellate Court was perfectly correct in stating that the averment of oral tenancy was an invention made by the plaintiff to support her cause. In the absence of any material to accept the assignment and the alleged tenancy, the plaintiff would not be entitled to any one of the reliefs. Thus, the first appellate Court was perfectly correct in reversing the judgment of the trial Court and in dismissing the suit. Nothing is noticed to interfere in the judgment of the first appellate Court, and the same has got to be sustained.

10. In the result, this second appeal is dismissed, confirming the judgment and decree of the first appellate Court and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Karur
2. The Principal District Munsif
Kulithalai
3. The Record Keeper
V.R. Section

High Court, Madras.

nsv/